

LW209-5-SP-CO: Current Issues In Public Law**LW209-6-SP-CO: Current Issues In Public Law****Teaching Team**

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Module Description

This module builds on LW103 Foundations of Public Law, and offers a more advanced, in-depth look at a narrower range of topics.

The research-led teaching for this module provides insights into several areas of public law that are not always available in the standard texts on the subject, and is designed to enable detailed consideration of issues that are of current importance and the subject of research within the School of Law. With this in mind, the topics on the syllabus will be approached flexibly and may be adjusted from year to year.

Issues for 2019-20

Five issues have been selected for study this academic year. For each issue, there are two two-hour lectures to help you understand the topic and spark your interest, followed a week later by a two-hour tutorial (for which you *must* prepare *and* actively participate). Because of the wide-ranging nature of the module, there is no single set text: the reading for each of the lectures and tutorials will be on Moodle: some sources will be provided directly, while for some you will be provided with the reference to find it yourself. Students are reminded of the importance of both preparation for and participation in tutorials: please check your email and Moodle regularly for updates.

The theme for the module this year is

**The United Kingdom Constitution:
a Constitution in Crisis?**

With this question as our framework, the issues we will be looking at this year are as follows:

Issue 1: The history of the UK constitution

It might seem strange to begin a module called ‘Current Issues in Public Law’ with two lectures about history. However, before we can understand where we *are* (much less where we’re *going*) we must first properly understand where we’ve *been*.

To examine *current* issues in public law effectively, we must therefore place these current issues in their proper historical context. We cannot examine them in a decontextualized, isolated fashion, as if they just popped out of nowhere. Therefore, in the first two lectures, Dr Tom Flynn begins by exploring in much greater detail than last year the actual history of the

evolution of the constitution, particularly as regards the formation and development of the modern United Kingdom of Great Britain and Northern Ireland, and the concept of parliamentary legislative supremacy.

Issue 2: Codification

You learned last year of the ‘evolutionary’, non-codified nature of the UK constitution, and how this differs from most constitutions in the democratic world. It is often said that the UK has an ‘unwritten’ constitution, but as you know, this isn’t quite right: much of it *is* written, just not all in the same document. Having laid our historical foundations in Issue 1, we turn our gaze to the future in Issue 2, by asking whether the UK is moving towards codifying its constitution, and whether it should do so.

Recent developments, most notably in Scotland and regarding the UK’s membership of the EU, have put the unwritten UK constitution under enormous strain. Will, or should, these developments lead to the creation of a codified, documentary constitution for the UK? What would be the benefits of such a development, and what might such a document look like? Alternatively, what disadvantages might lead us to oppose such codification?

Issue 2: Devolution

Devolution is an issue that is frequently glossed over in English legal education. In one sense, this is perfectly understandable: though there is a Scottish Parliament and there are Assemblies in Wales and Northern Ireland, there is no specifically English Parliament or Assembly. The Westminster Parliament, though it sits in England and a large majority of its members represent English constituencies, is the Parliament of the whole UK, not just England.

But this does not mean that devolution is not important for students of English public law. Quite the contrary: the nature of the past, present, and future relationships between the four parts of the United Kingdom is a question of fundamental importance and of great current controversy.

In these lectures, Tom will outline the creation, nature, powers, and current status of the three devolved legislatures, and what their existence means for the UK constitution. Building on the previous discussions of the history of the UK and the possible future of its constitution, we will examine such issues as why the model of devolution chosen was ‘asymmetrical’ (with the institutions in Scotland, Wales and Northern Ireland each having different powers and institutional forms); why there has been no devolution to England; whether there should be; and whether the current setup is sustainable in the long term.

Issue 3: The protection of human rights

Dr Anna Hardiman-McCartney takes over the teaching at this point, and begins by examining the current controversies regarding the protection of human rights in the UK constitution. Political argument about the Human Rights Act—and whether it should be strengthened, weakened, or got rid of—has gone rather quiet since 2016 because of the focus there has been on Brexit. But it is important to remember that the HRA makes the European Convention on Human Rights effective in UK law, and that the ECHR *is not EU law*. The HRA will therefore (initially, at least), be entirely unaffected by the UK’s departure from the EU.

Similarly, the European Court of Human Rights in Strasbourg, the body charged with interpreting the ECHR, *is not an EU institution*, and is entirely separate from the Court of Justice of the European Union (CJEU), which sits in Luxembourg.

Quite aside from the HRA, human rights also exist at common law, and the judiciary has shown an increasing willingness to engage in judicial review not just of procedural matters, such as whether the government has acted in accordance with the strict terms of legislation, but on substantive grounds such as ‘unreasonableness’ and ‘proportionality’. How does this affect the relationship—and the balance of powers—between the judiciary, the executive, and the legislature? This is an area of the constitution under quite some strain, as the recent controversy over last year’s (non-)prorogation of Parliament has demonstrated.

Issue 4: Brexit

No module calling itself ‘Current Issues in Public Law’ would be complete without examination of Brexit, which is arguably *the* current issue in public law. In this module, Anna will present in the issue in the context of all the issues already discussed: the past and future of the UK constitution, devolution, and human rights. An understanding of all these issues is crucial to an understanding of Brexit, which is why it is the last issue of the term.

The lectures will look at how the Brexit referendum came to be held, the current state of play, and the effects that Brexit has already had, and may yet have, on the public law of the UK.

Where to find information about this module

This document contains essential information about

- **teaching and learning arrangements for the module**
- **formative and summative assessment**

Lecture outlines and tutorial questions are published separately on Moodle week by week. We may use the discussion forum on Moodle, which should automatically send you an email when a new message is posted.

Recommended reading

Because this module is organised as a series of free-standing topics, there is no single set textbook. You will be directed to essential reading for each topic (see Moodle) and you are expected to use your research skills to find additional relevant reading material yourself.

The module at two levels

There are two versions of this module. It is important you know which one you are enrolled in as the learning outcomes and assessment differ, as explained below. The reading, lectures and tutorials are the same for both versions.

Learning Outcomes (level 5)

Upon successful completion of the module, students will be able to demonstrate:

- **in-depth understanding of several areas of public law**
- **ability to identify and use a variety of primary and secondary source materials**
- **ability to carry out and reflect on the process of undertaking a small-scale research project with guidance.**

Learning Outcomes (level 6)

Upon successful completion of the module, students will be able to demonstrate:

- **in-depth understanding and critical appreciation of several areas of public law**
- **understanding of how principles of public law function in different contexts**
- **ability to identify and use a variety of primary and secondary source materials**
- **ability to devise a research question, carry out and reflect on the process of undertaking a small-scale research project into a topic of public law, with limited guidance.**

Assessment:

100 per cent coursework mark.

Students taking this module at level 5 will complete coursework centred on one of the topics studied, based on a set question. The coursework will consist of a 2,500-word essay. Formative assessment will provide feedback on an essay plan and literature search.

Students taking this module at level 6 will complete coursework centred on one of the topics studied, based on a research question developed by the student. The coursework will consist of a 3,000-word essay. Formative assessment will provide feedback on the formulation of a research question, an essay plan and literature search.

Schedule

See table on next page.

	Topic	Who is leading the topic	Lecture (the whole year group), Thursday 1100-1300 , room TC2.6 + TC2.7, except Week 17a	Tutorial (two small groups), Monday 1100-1300 , room 6.101
Week 16	Introduction and Issue 1: the history of the UK constitution	Tom Flynn	2-hour lecture: Introduction to the module, introduction to the history of the UK constitution	No tutorial this week
Week 17a	Issue 1 continued; Issue 2: Codification	Tom Flynn	2-hour lecture on history and codification of the constitution (note time and place: Monday, 1100-1300 (room TBC))	No tutorial this week
Week 17b	Issue 2 continued	Tom Flynn	2-hour lecture on codification	No tutorial this week
Week 18	Issue 3: Devolution	Tom Flynn	2-hour lecture on devolution	Group 1: 2-hour tutorial on history and codification
Week 19	Issue 3 continued	Tom Flynn	2-hour lecture on devolution	Group 2: 2-hour tutorial on history and codification
Week 20	Issue 4: The protection of human rights	Anna Hardiman-McCartney	2-hour lecture on the protection of human rights	Group 1: 2-hour tutorial on devolution
Week 21	Issue 4 continued	Anna Hardiman-McCartney	2-hour lecture on the protection of human rights	Group 2: 2-hour tutorial on devolution
Week 22	Issue 5: Brexit The essay questions are published for level 5 this week	Anna Hardiman-McCartney	2-hour lecture on Brexit	Group 1: 2-hour tutorial on human rights protection
Week 23	Issue 5 continued	Anna Hardiman-McCartney	2-hour lecture on Brexit	Group 2: 2-hour tutorial on human rights protection
Week 24	No lecture		No lecture	Group 1: 2-hour tutorial on Brexit protection and Brexit
Week 25	No lecture		No lecture	Group 2: 2-hour tutorial on Brexit